IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1303 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PATEL RAMESHBHAI UMEDBHAI
Versus
STATE OF GUJARAT

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Appearance :
MS NITA C BANKER for Appellant
MS SS PATEL APP for Opponent

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

Date : 07/10/2006

ORAL JUDGMENT

1 This Appeal is preferred against the judgment and order delivered by learned Special Judge (NDPS), Third Fast Track

Court, Mehsana, on 30th of August, 2003, in Special (NDPS) Case No. 3 of 2002, whereby the present appellant came to be convicted for the offence punishable under Section 20 of the Narcotics Dugs and Psychotropics Substance Act, 1985, and was sentenced to undergo rigorous imprisonment of five years and to pay fine of Rs. 50,000/- in default to undergo imprisonment of six months. It is directed by the judgment and order impugned that the period which the appellant has undergone during trial shall be given in set off to him under Section 428 of the Criminal Procedure Code.

2 As per brief facts of the prosecution case, one Balabhai Mohanbhai Rajpara was serving as Police Inspector, at Taluka Police Station, Kalol, District – Mehsana and on 18th of July, 2002, he received information that appellant – resident of village Dhanja, keept in his possession at his resident ganja and he also was involved in selling ganja. On verification of information, the same was found with substance and, therefore, he noted the information in station diary and informed his superior officers. Thereafter, a raid was arranged and the panchas were called. Concerned Deputy Superintendent of Police of the Division also accompanied in the raid. A resolution under Section 42 of the NDPS Act came to be passed as in view of the emergency, there was no time to obtain warrant from Magistrate. Two panchas - Dineshgiri Govindgiri Goswami and Jabbarbhai Fulabhai Gadhvi

expressed their willingness to act as panchas in the said raid. Therefore, PI, Dy. S.P., other Head Constables and two panchas searched each other and vehicle which was to be used also was searched. A panchnama of first part was executed at about 16 to 16.15 hours. From Police Station, Kalol, this raiding party reached at village Dhanaj at the residence of the appellant. Appellant was informed about the raid and the search which was required to be made in his residence. Procedure as per Section 50 of the NDPS Act was complied with, but the appellant stated that he was not willing to be searched in presence of any other gazetted officer. On search from bath room, one big bag of canvass was found and from that bag, small plastic bags, seven in numbers, were found, in which ganja leaves were found to the extent of 7 Kgs and was seized by the police, which was costing about Rs. 7,000/-. From each of the ganja bags, 50 grams ganja was taken out and sample was prepared an sealed to be sent to FSL. In addition to this, one scale and measures were also found from the residence of the appellant. A seizure memo was prepared and panchnama of these procedure was executed in the presence of panchas. From there, all including accused, returned to the Police Station and superior officers were informed by P.I. and he offered a complaint. Upon which, investigation was carried and charge sheet came to be filed against the appellant on 17th of September, 2002. A charge was framed against the appellant vide Exhibit-4 to which he pleaded not guilty and therefore the prosecution examined as

many as 5 witnesses and produced on record voluminous documentary evidence. Thereafter, the statement of the accused was recorded under Section 313 of the Criminal Procedure Code, wherein after denying the evidence of prosecution in toto, submitted that he was innocent and a false case was filed against him. In fact, he was moving in his village at about 3.00 p.m. and he was arrested by Police. Learned Special Judge thereafter heard both the parties and delivered the above said judgment and order convicting the accused – appellant and hence this Appeal.

3 Learned Advocate Ms. Nita C Banker for the appellant and learned APP Mr. S.S. Patel for the respondent State were heard in detail.

4 Learned Advocate Ms. Banker after going through the record and arguments, restricted her arguments only to the extent of quantum of sentence imposed upon the appellant. It was submitted that so far as the merits of the matter is concerned and so far as the conviction of the appellant for the above said offence is concerned, she has nothing to say, but according to her, in the peculiar facts and circumstances of the case, the quantum of sentence is required to be considered and be reduced to reasonable extent. Learned APP Mr. S.S. Patel was also heard in respect of quantum of sentence.

5 Learned Advocate Ms. Banker for the appellant

submitted that what is found from the appellant is ganja and not psychotropic substance. It is submitted that in the Schedule of NDPS Act at Item No. 55, small quantity of ganja is prescribed to be 1000 gms while commercial quantity is prescribed to be 20 kgs. It is submitted that, therefore, the quantity of ganja found is nearer to small quantity and far away from commercial quantity. It is submitted that this is an important factor in considering the quantum of sentence. In addition to this, it is submitted that, at the time of incident, the appellant was aged 56 years and today he is aged above 62 years. The appellant is an agriculturist and has no antecedent. It is submitted that the appellant is suffering from asthma and he requires intensive treatment for that. It is submitted that till today, in all considering the set off, the appellant has already undergone the rigorous imprisonment for more than four years out of substantive sentence of five years. The appellant belongs to a very poor strata of society and he has to maintain his family from agricultural. It is submitted that by undergoing rigorous imprisonment of more than four years, the appellant must have learnt a lesson not to repeat the crime for which he is convicted. It is submitted that therefore the punishment which he has already undergone would suffice for the crime which the appellant has committed.

6 Having heard learned counsels for the parties and going through the record and with reference to the only contention

raised in respect of quantum of punishment, it must be borne in mind that, the object of punishment is deterrent, reformative and retributive. Punishment serves a purpose inasmuch as it acts deterrent for those who have propensity to commit such offences. While imposing punishment, the main objectives i.e. (i). punishing the criminal not to repeat the crime, and (ii) attempt to reform him to be a responsible member of the society must be taken into consideration. The third object of retributive punishment is not relevant in the facts of this case. True it is that, what is found from the appellant is a contraband substance i.e. ganja, to the extent of 7 kgs. It is also true that, the quantity which is found is higher than the minimum but lesser than the commercial quantity of 20 kegs. At the same time, it may also be taken into consideration while considering the quantum of punishment that the quantity of ganja found from the appellant is near to the minimum quantity and away from the commercial quantity, as prescribed by the NDPS Act. The question, therefore, is what should be the appropriate punishment for the crime committed by the appellant. Undoubtedly, the offences under the NDPS Act are serious and on proof of guilt, punishment should be commensurating to the serious act. In the present Appeal, while balancing the seriousness of the crime with appropriate punishment, two things must not escape from consideration i.e. (i) what is found is ganja and (ii) mitigating circumstances.

7 Learned APP has placed on record jail remarks

of the appellant, which denotes that before conviction, the appellant has undergone the imprisonment of one year and 43 days and after conviction, he has undergone the imprisonment of three years, one month and four days, totalling to four years, two months and 17 days, as on 04th of October, 2006. Meaning thereby that, almost more than 80% of the imprisonment appellant has undergone.

8 In above view of matter, while considering the mitigating circumstances as narrated above by learned Advocate for the appellant and balancing the proportion of the punishment in view of the seriousness of crime, it clearly appears that the ends of justice would be met if the sentences imposed upon the appellant is reduced to appropriate and reasonable extent. In this view of matter, following order is passed.

" This Appeal is partly allowed. While maintaining the conviction as awarded by the Special Judge to the appellant, the sentence imposed upon the appellant is reduced and modified. The appellant is directed to undergo four years rigorous imprisonment instead of five years rigorous imprisonment as imposed by the Trial Court. While maintaining the amount of fine of Rs. 50,000/-as imposed upon the appellant by the Special

Judge, the imprisonment imposed by the Special Judge in default of the payment of fine is reduced to two months and 15 days instead of six months as imposed by the Special Judge. Except the above said modification and reduction of sentence imposed upon the appellant, the rest of the Appeal of the appellant stands dismissed. The orders passed by the Special Judge in respect of muddamal, etc. is not interfered with. If the appellant has already served the sentence as directed by this Court in this order, the appellant shall be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Office is directed to transmit the writ of the operative order to the Jail Authorities i.e. Central Jail, Ahmedabad, immediately and preferably today itself. “

(J. R. VORA, J.)

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